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IDDAH-A RECEDING CONCEPT IN ISLAMIC LAW

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I. INTRODUCTION, DEFINITION AND CONCEPT OF IDDAH

Iddah period was known and practiced during the Jahliyyah[1] period. When Islam came, it adopted and modified it[2] This period of Iddah has been ordained by Allah (S.W.T.) in the Qur'an[3].

In Islamic Law, it is obligatory to observe Iddah by women at the death or divorce by their husbands and this is unanimously agreed upon by the Jurists.[4]

Iddah can only be observed by a woman who is divorced or lost her husband if there is the establishment of a valid marriage between her and the husband in question.

However, the term Iddah literally means number or counting[5]. in Islamic Law, Iddah is a waiting period of women who are separated from their husbands due to death or divorce before engaging in any other marital relationship.[6] It is for three months in the case of divorce and four months and ten days in the case of the death of the husband.[7]

The prescribed period of Iddah is counted based on either menstrual periods or periods of cleanliness.[8] There are divergent views by the scholars on the method of counting the prescribed Period of Iddah.[9] But the unanimous opinion is that she begins the counting in either period of *Tuhr (purity)* or period of *Haidah (*impurity*)*.[10] Both Imams Maliki and Shafi'i hold the view that a divorced woman should count the period of *Tuhr* (purity) and not the period of bleeding.[11] This is to say that the counting should be based on the period of cleanliness when a woman is free from impurity *(haidah).*

Islamic law enjoins a woman to observe her Iddah in her marital house until the expiration of her Iddah period. It is therefore unlawful to observe it elsewhere except if she is exposed to danger[12] and in case of Iddah of divorce; the husband is enjoined not to force her out except if she commits lewdness.[13] In Iddah, a woman is entitled to maintenance by the husband.[14]

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[1] Period of ignorance

[2] As-Sayyid Sabiq (1996), *Fiqh Us-Sunnah*, Rendered into English by F. Amira Zrein Matraji, Dar El Fikr, Beirut, Vol. III, p.196

[3] Al-Qu'ran 2:234-235

[4] Imam Abdul-Walid Muhammad Al-Qurtabi (1425-1426/2005), *Bida'ayat at-Mujtahid wa Nihayat ul-Muqtsid*, Dar El Fikr, Beirut, Vol II, p.100.

[5] Abdul Rahman Al-Jazairi (ND), *Fiqhu-Ala Madahibul Arbah*, Al-Maktab Al-Thaqafy Pubishing & Distributing, Cairo, vol. IV,p.381

[6] Ibid

[7] Al-Qur'an 2:228, 2:234.

[8] Abdul Rahman Al-Jazairi, op. cit.,

[9] Ibid

[10] As-Sayyid Sabiq (ND), *Fiqh Us-Sunnah*, Darul Thurath, Cairo, Vol. II, p. 209.

[11] Abdul Rahman Al-Jazairi, op. cit.,

[12] Ibid

[13] Al-Qur'an 65:1, As-Sayyid Sabiq. (1996), op. cit., p. 205.

[14] Al-Qur'an 2:241, Ibid

During the Iddah period widows or divorced women are not allowed to enter into a new marriage until the stipulated period expires.[15] The Holy Qur'an prohibits a woman observing her Iddah from remarrying during that period.[16] In the case of *Mayaki vs Nda,*[17] the Court of Appeal held that the Holy Qur'an prohibits a woman observing her Iddah from remarrying during that period because during the Iddah, the marriage is understood to be merely dormant but not ended, as there is room for reconciliation between the husband and wife. Also, a man is forbidden to marry a woman who is observing Iddah for the law still affixes the stamp of marriage on her. Any marriage contracted within the Iddah period is a nullity.[18]

All the four schools unanimously agreed that in both revocable and irrevocable divorced where the woman is pregnant, she is entitled to maintenance such as food, clothing and lodging during Iddah.[19]This is based on the verse of the Qur'an that says:

æÅä ßä ÃæáÇÊ Íóãúáò ÝÇäÝÞæÇ Úáíåä ÍÊì íÖÚä Íãáåä ...

Meaning

> ... And if they carry (life in their wombs), then spend (your substance) on them until they deliver their burden. Qur'an 65:6

However in revocable divorce, even if she is not pregnant she still entitled to maintenance.[20] Imam Abu Hanifa did not differentiate between the pregnant and non-pregnant woman. He says all divorced women are entitled to maintenance during Iddah because all are to wait for prescribed periods and all are prohibited[21] from contracting fresh marriages.

According to Imam Malik and Shafi'i, an irrevocably divorced woman who is not pregnant is entitled to lodging <u>only</u>,[22] but not to other items of maintenance.[23] But if she is pregnant, she should be maintained she should not come out of her house until she delivers her child.[24]

In case of Iddah of death whether a woman is pregnant or not, she is not entitled to maintenance. This is for the fact that by the death of her husband his ownership of property is subject of in heritance by his heirs.[25]

A woman observing Iddah should not be turned out of her matrimonial home or leave on her own accord.[26] But there are divergent views by scholars on the going out of women in Iddah. It is the opinion of Imam Malik that a woman who is observing Iddah can go out of her matrimonial home during the day to buy necessity of life like food, fetching water or sell some things in order to get money to sustain her where there is no one to support her financial or help her, whether she is widow or divorced.[27]

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[15] Abdul-Rahman Al-Jazairi, op. cit., p. 383
[16] Al-Qur'an 2:235, see also the case of Mayaki vs Nda (1993) 3 NWLR Pt. 280 p. 313 at 315.
[17] Ibid
[18] Shamsuddin Muhammad Dazuqi, *Hashiyah Dazuqi*, (ND), Vol. II, Darul Fikr Beirut, pp. 218-459.
[19] Sheikh M.T. El-Nimairi, *Personal Status in Islam*, (Unpublished Manuscript), p.204
[20] Ibid p. 205
[21] Ibid
[22] Emphasis mine
[23] Sheikh M.T. El-Nimairi, op. cit., p. 205, and Qur'an 65:5
[24] As-Sayyid Sabiq (ND), op. cit., p. 216
[25] Ibid and see Abdul Rahman Al-Jaizairi, op. cit, p. 426.
[26] See Qur'an 65:1
[27] As-Sayyid (ND) op. cit., p. 215

The jurists added that she should not go out in the night except to attend to very serious matters, and that wherever she goes she must come back to sleep in her house.[28] In a revocable divorce, Imam Shafi'i opines that she should not go out at all, that the irrevocably divorced woman can go out during the day. But Imam Hanafi holds that both revocable and irrevocable should not go out, it is only the widow who is permitted to go out during the day and part of the night but must come back to sleep in her house.[29]

In a situation where her husband died away from her or where the husband did not leave her in a house of his own or the husband died leaving her without inheritance or the other inheritors got her out of the shares of inheritance. Here, she is entitled to move out during Iddah to either return to her family or rent an apartment if she is able to or perform her Iddah wherever she desires.[30]

These are exemptions to the general rule that a woman must observe her Iddah in the house where her husband had died. The Qur'an has said in relation to this that:

> æÇáÐíä íÊæÝøæä ãäßã æíÐÑæä ÃÒæÇÌÇ æøÕíøÉð áÃÒæÇÌåã ãøÊÇÚðÇ Åáì ÇáÍæá ÛíÑ ÅÎÑÇÌò ÝÅä ÎÑÌä ÝáÇ ÌäÇÍ Úáíßã Ýì ãÇ ÝÚáä Ýì ÃäÝÓåä ãä ãÚÑæÝò æÇááå ÚÒíÒ Íßíã

Meaning:

> Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence; But if they leave (the residence) there is no blame on you for what they do with themselves, provided it is reasonable, and Allah is, Exalted in power, Wise. Surah Baqara 2:240

A woman observing Iddah is thus prohibited from traveling for any purpose even for pilgrimage, visit to either congratulate or condole anyone.[31]

As to the mode of dressing for a divorced woman who is in Iddah, there is no specific prescribed mode of dressing for her. But shariah has disallowed a woman who is mourning the death of her husband from dressing gorgeously. It is infact obligatory for a woman to abstain from adornment during Iddah.[32] That is, she should not wear fine or coloured clothes or ornaments like ear rings, finger rings, jewelries, collyrium (tiro) etc. that will attract the attention of men to her. She is only enjoyed to wear black dresses as allowed by Imam Malik.[33] It was narrated that 'Aishah and Hafsah, wives of the Prophet (S.A.W) reported that the Apostle of Allah (S.A.W) said:

> it does not befit a woman who believes in Allah and the Last Day to mourn for anybody dead and abstain from adornment for more than three nights except for the husband.[34]

In addition, a woman who is observing Iddah on the death of her husband may use collyrium if she should fear ailment of the eyes or any other medicine even though it

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[28] Ibid
[29] Ibid
[30] Ibid, pp. 214-215.
[31] Abubakar b. Hasan Al-katsinawiy (ND), *As-hohul Madarik*, Darul Fikr, Beirut, vol.II, p.188
[32] Imam Muslim (1993), *Sahih Muslim*, Rendered into English by Dr. Mahmoud Matraji, Dar El-Fikr, Beirut, vol.II p.423
[33] Imam Abul-Walid Muhammad Al-Qurtabi, op. cit., p.100
[34] Prof. Muhammad Rahimuddin (1985), *Muwatta Imam Malik*, Taj Company, New Delhi, p.270

may contain scent[35]. Imam Malik agreed that she can only use it in the night and not during the day.[36]

The expiration of Iddah marks the end of marital union between the husband and his wife in Islamic Law. Therefore, Iddah in the case of divorce is three months[37] while it is four months and ten days in the case of death of the husband.[38] But where the woman was pregnant whether the Iddah is divorce or death, then Iddah ends with the delivery by her of the child.

Where the woman is pregnant, her Iddah ends with the delivery by her of the child[39] even if it is before the burial of her late husband.[40] But a pregnant divorced woman's Iddah expires on delivery or on completion of four months and ten days which ever come later.[41]

II. TYPES OF IDDAH

There are different types of Iddah prescribed by the Holy Qur'an and Hadth of the Prophet (S.A.W.) with respect to the duration of each.

Iddah for Menstruating Women is Three Courses.

This is to say that she will observe three period of courses. The Qur'an says:

æÇáãØøáÞÇÊõ íÊÑÈÕä ÈÃäÝÓåä ËáÇËÉ ÞÑæÁò

Meaning:

> Divorced women shall wait concerning themselves for three monthly period. Al-Qur'an 2: 228

The above verse of the Qur'an refers to the Iddah of Menstruating women who are divorced. The Qur'an further emphasize that:

íÇíøåÇ ÇáäÈíø ÅÐÇ ØáÞÊã ÇáäÓÇÁ ÝØáÞæåä áÚÏÊåä æÃÍÕæÇ áÚÏÉ æÇÊÞæÇ Çááå ÑÈßã

Meaning:

> O Prophet! When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord Al-Qur'an 65:1

Here, the pronouncement of the divorce should allow the woman to make proper counting of the period. The woman will start the observation of the Iddah immediately the divorce is pronounced without losing any time.

A divorced woman whose marriage has been consummated and who usually menstruates have to wait for three periods from the moment of her divorce. She is not allowed to remarry until the period expries.[42]

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[35] Ibid p.271 and Imam Abul-Walid Muhammad Al-Qurtabi, op. cit.,
[36] Ibid
[37] Al-Qur'an 2:228
[38] Al-Qur'an 234
[39] Al-Qur'an 65:4
[40] Prof. Muhammad Rahimuddin, op. cit., pp.265-266
[41] Abdul Rahman Al-Jazairi, op.cit., p.386
[42] Sheikh M.T. El-Nimairi, op. cit., p. 199

Nafi reported that 'AbdAllah b. Umar divorced his wife during menstruation in the time of the prophet (S AW). Umar b. al-Khattab asked the Prophet (S.A.W) on the matter. The Prophet (S. A. W) replied: Ask him to take her back and wait until the period of menstruation is over, until she get menstruated again and gets clean. After that, it is open to him to keep her or divorce her. If she is to be divorced, he is not to cohabit with her during her cleanliness. This is the *Iddah* that the Lord has commanded about in divorce.[43]

In another vein, A'isha, the Mother of the Faithful, terminated the Iddah of her niece Hafsah, daughter of 'Abd al-Rahman b. Abu Bakr Siddiq, when her third mensration began. Ibn Shiāb said: I spoke of this to 'Amrah, daughter of 'Abd al-Rahmān who said that 'Urwah b. Zubair had spoken the truth. The people quarreled with A'ishah in this respect and said: Verily, the Exalted Lord commands the divorced women to restrain themselves until three periods of cleanliness.[44]

However, the Jurists differed with respect to the period. Some understood it to be the time of blood *(Hayd ÍíÖ)* that is when the woman is menstruating and some take it to be the time of purity *(Thur ØåÑ).*

Imam Malik, Imam Shafi'i and Imam Hanbali agreed that the period mean the time of cleanliness (purity). This is in line with the opinions of some companions of the Prophet (S. A. W) namely A'ishah, Ibn Umar and Zaid Ibn Thabit.[45] But Imam Abu Hanifa took this word to mean the time of menstruation. This opinion follows the understanding of the companions like Abubakar, Umar, Ibn Abbass Ibn Mas'ud and Abu Musa Al-Ashari.[46]

Therefore, Iddah Period is three purities *(tuhr)* or three blood *(hayd)* and not three months as widely believe by some Muslims. This differs according, to the nature of women, but majority have their menses every month.[47] The menses must be full, even if the duration is brief.[48]

Iddah for Non-Menstruating Women is Three Months.

The Holy Qur'an says:

> æÇááÇÆí íÆÓä ãä ÇáãÍíÖ ãä äÓÇÆßã Åä ÇÑÊÈÊã ÝÚÏÊåä ËáÇËÉ ÃÔåÑ æÇááÇÆí áã íÍÖä

Meaning:

> Such of your women as have passed the age of menstruation, for them the prescribed period, if you have any doubt, is three months. And let the same period be the waiting period of those who have not yet menstruated. Al-Qur'an 65:4

This type of Iddah, refer to the following group of people:

(i) The old women who has passed the age of menstruation.
(ii) The young girls or women who have not started menstruating.[49]

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[43] Prof. Muhammad Rahmuddin. op, cit., p.258
[44] *Ibid.*
[45] Sheikh M.T. El-Nimairi, op, cit., p200
[46] *Ibid.*
[47] *Ibid.*
[48] Abdul Rahman Al-Jazairi op, cit., p.381
[49] Sheikh M.T. El-Nimairi, op. cit., p203

The first group of women is those who were menstruating but because of old age they gave up the hope of having menstruation. There is no fixed age for such women but mostly about 50 years of age.

The second groups are the young one who did not attain the age of puberty. The Iddah for these two groups is three months but if during that period one of them happens to menstruate her term changes from three months to three periods of *tuhr* (purity).[50]

Iddah For Those Women Whose Husband Die.

According to the Qur'an:

> æÇáÐíä íÊæÝæä ãäßã æíÐÑæä ÃÒæÇÌÇ íÊÑÈÕä ÈÃäÝÓåä ÃÑÈÚÉ ÃÔåÑò æÚÔÑÇð

Meaning:

> If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days:... Al-Qur'an 2:234

The Iddah of a woman whose husband had died is four months and ten days as long as she is not pregnant.[51] But if she is pregnant her Iddah is by the delivery without any recourse to the period of four months and ten days again.[52]

If a revocable divorced woman is serving Iddah of three periods of purity or the periods of three months and the husband das then that Iddah change to Iddah of death (four months and ten days). But if the divorce is revocable her Iddah does not change.[53]

The counting of the Iddah of death starts from the time the husband dies even though the wife might be ignorant of it. All jurists agree to this.[54]

Iddah for Divorced Women

If a woman is divorced before consummation she has no Iddah to observe at all. She may marry the moment she is divorced. The Qur'an says.

> íÇÃíåÇ ÇáÐíä ÇãäæÇ ÅÐÇ äßÍÊã ÇáãÄãäÇÊ Ëã ØáÞÊãæåä ãä ÞÈá Ãä ÊãÓæåä ÝãÇáßã Úáíåä ãä ÚÏÉ ÊÚÊÏæäåÇ

Meaning:

> O you who believe! When you marry believing women, and then divorce them before you have touched them, no period of iddah have you count in respect of them Al-Qur'an 33:49

This verse of the Qur'an is in respect of divorce before consummation, but if her husband dies before consummation she must observe the Iddah of death (four months and ten days) because at the time of death she was a wife.[55]

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[50] Ibid
[51] Emphasis mine
[52] Sheikh M.T. El-Nimairi, op, cit., p203
[53] Abdul Rahman Al-Jazairi, op, cit., p384
[54] Sheikh M.T. El-Nimairi, op, cit., p203
[55] Al-Qur'an 234

Iddah for Pregnant Women

According to the Qur'an

æÃæáÇÊõ ÇáÃÍãÇáö Ãìáåä Ãä íÖÚä Íãáåõäøó

Meaning:

> *For the pregnant women their prescribed time is that they lay down their burden.* Al-Qur'an 65:4

Therefore, Iddah of pregnant woman ends with her delivery. The majority of the jurists hold that the Iddah of a pregnant expires immediately after delivery, even if it is before the burial of her late husband.[56] Another view is that the Iddah of a pregnant divorced woman will expire on delivery or on completion of four months and ten days whichever come later.[57]

Iddah for a Wife Whose Husband is Missing

Islamic law is not specific on the issue of Iddah of the wife of a missing husband *(Mafqud)*. But it was reported from the Prophet (S.A.W) that:

> Sa'id Ibn Al-Musayyab reported that Umar Ibn
>
> Al-Kahttāb said; if a woman's husband is missing and she does not know his whereabout, she should wait for four years, beginning from the date when news about him stopped.
>
> And after completion of four year she should sit in Iddah for four months and ten days. After that period she is free to remarry.[58]

This *hadith* of the Prophet (S.A.W) provides for a woman to first wait for four years after which she can embark on the observation of *Iddah* of four months and ten days.

Iddah of Other Types of Women

There are other types of women who are enjoined to observe Iddah with some conditions and may be exonerated for some reasons. They are:

(i) Slaves: If the master of a slave girl dies, she is not enjoined to observe Iddah according to Imam Abu Hanifah.[59] But Imam Malik said that:

> It reached him from Sa'id Ibn Al-Musayyab and Sulaiman Ibn Yasar who said: When the husband of a slave girl should die, her period of Iddah is two months and five days.[60]

Where the slave-girl attains freedom or has child or children for her master husband, then this slave-girl should observe *Iddah* for four months and ten days like a free woman.[61]

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[56] Abdul Rahman Al-Jazairi op, cit., p.386, see also Professor Muhammad Rahimuddin, op, cit., p.266
[57] Abdul Rahman Al-Jazairi op, cit., p.386
[58] Professor Muhammad Rahimuddin op, cit., p.257
[59] Imam Abul-Walid Muhammad Al-Qurtabi, op, cit., p.100 and p.320
[60] Professor Muhammad Rahimuddin, op, cit., p.268
[61] Ibid

(ii) **Umm Walad-** if a woman has children for her master and the master dies, she should observed Iddah for four months and ten days.[62] But Imam Malik contended that Umm Walad cannot be counted among wives as contained in Surah Baqara verse 234 which says:

æÇáÐíä íÊæÝøæä ãäßã æíÐÑæä ÇÒæÇÌðÇ íÊ ÑÈÕä ÈÃäÝÓåä ÃÑÈÚÉ ÃÔåÑò æÚÔÑðÇ

Meaning:

If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days...

The Hadith of the Prophet (S.A.W.) narrated by Ibn Abbas (R.A.) says:

ÃóíøõãóÇ ÇãúÑóÃóÉö æóáóÏóÊú ãöäú ÓóíøöÏöåóÇ ÝóÅöäøóåóÇ ÍõÑøóÉõ ÅöÐóÇ ãóÇÊó[63]

Meaning

Any woman who has a child or children for her owner has become a freeborn.

(ii) A woman whose marriage with the husband is not valid should observe what is known as *Al-Istibrai*. This is a situation where sexual intercourse vides Zina involved a man and a woman and she eventually become pregnant.

Istibrai will be observed for either divorce or death of the husband.[64] Istibrai (ÇáÇÓÊÈÑÇÁ) literally means to be free from or to make bare what is hidden. But in this context, it is to establish the emptiness of the wombs from pregnancy when possession shifts.[65]

There two types of Iddah under this. *Istibrai* of a slave-girl is one menstrual period but that of a freeborn is one menses.[66]

(iii) A woman who is divorced and with reconciliation and eventually her husband dies, before she completes her *Iddah* will convert her *Iddah* of divorce to Iddah of death with effect from the date of death of the man.[67]

(iv) Under age women who marry early are exempted from observing *Iddah*.[68]

(v) Women of other religion who are married to Muslim but they still retain their religion after marriage. *Iddah* is an institution only for Muslims.[69]

(vi) Iddah of a marriage, which is null and void ab-initio. For instance a marriage between a brother and his sister, if there is no consummation there will be no

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[62] Ibid pp.267-263

[63] Imam Abul-Walid Muhammad Al-Qurtabi, op, cit., p.320

[64] Shamsuddin Muhammad Dazuqi (ND), *Hashiyah Dazuqi,* vol.II, Dar El-Fikr, Beirut, pp.508-522

[65] Ibid. Assayid Uthman Al-Ju'aliy Al-Malikiy (1982) *Sirajus Salik,Sharhu As-halul Masalik,* Dar El-Fikr, Beirut, p.99

[66] Shamsuddin Muhammad Dazuqi, Ibid

[67] M.A Ambali (2003). *The Practice of Muslim Family Law in Nigeria*, Tamaza Publishing Company, Zaria. p. 244

[68] See Al-Qur'an 33:49, Sheikh El-Nimairi, op. cit., pp.202-203

[69] Imam Abul-Walid Muhammad Al-Qurtabi, op, cit., p.100

Iddah. But if there is consummation, she will observe Iddah of menses or counting of months as the case may be.[70]

III. LEGALITY OF IDDAH

The Almighty Allah ordains the question of serving Iddah and it must be observed. The Qur'an states:

æáÇ ÊÚÒãæÇ ÚÞúÏÉ ÇáäøßÇÍ ÍÊì íÈáÛ ÇáßÊÇÈõ ÃÌáåõ

Meaning:

> And do not resolve any thing about the marriage until the waiting period expires. Al-Qur'an 2:235

The above verse of the Qur'an clearly states that a woman should never contrast a new marriage during her waiting period. This is the consensus of all the Jurists. Imam Maliki further explained that if a marriage is consummated during a woman's Iddah that marriage is null and void and in the meantime those parties should never come together because of the permanent prohibition resulted therefrom.[71]

The above explanation shows how important the observation of Iddah before the Almighty Allah.

However, Iddah is compulsory for a woman who is a free person, Muslim and matured. This is the consensus of all the jurists.[72] The Almighty Allah ordained Iddah for many reasons among which are:

(i) The Iddah period is a period during which reconciliation is hoped and permitted.[73] This is particular with reference to the Iddah of divorce. The period is to allow the parties to have a re-think and properly resolve amicably. This is the more reasons why Islamic law stipulates that a woman should observed her Iddah in her husband's house while he is still maintaining and catering for her.

(ii) The Iddah period is meant to ensure whether the wife is pregnant at the time of divorce or death. This period is aimed at determining the state of the wombs to secure the legitimacy and identity of the child (if any).

(iii) The Iddah period is a period of mourning and showing signs of sorrow for those who lost their husbands. The Iddah period shows how great and solemn the conjugal relations, which should not end so easily or promptly.[74]

IV. FACTORS MILITATING AGAINST OBSERVATION OF IDDAH IN OUR SOCIETY

We have earlier discussed that Al-Qur'an[75], which is the primary source of Islamic Law, stipulates that all Muslim women in the event of divorce or death of their husbands must observe Iddah.

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[70] As-Sayyid Sabiq, op.cit., p.212

[71] As-Sayyid Sabiq, op, cit., p.197

[72] Imam Abul-Walid Muhammad Al-Qurtabi, op, cit., p.100. Note that we have earlier treated the Iddah of other categories of women

[73] As-Sayyid Sabiq, op. cit., p.196 See also Sheikh M.T. El-Nimairi, op. cit., p.198

[74] Ibid

[75] Al-Qur'an 2:235

This means that observation of Iddah is compulsory under Islamic Law. But we found that observation of Iddah is taken with levity in our society particularly Iddah of divorce. Today, most women observe their Iddah either at their parent's house, in the house of the new suitor who she intends to marry or not observing it at all. This idea is indeed a violation of the law and it is totally against the injunction of Almighty Allah who is the Great Law Giver and who prescribes the best anti-dote for His creations. He knows the best.

Now, a question readily comes to one's mind and that is who is to be blamed, the parties, the society or the judiciary who has the wherewithal to enforce the law with respect to Iddah but refused to do so. Why are the courts handicaps? This and some other reasons we shall be looking at. The factors, which make the observation of Iddah difficult,

(i) Poverty/lack of maintenance.
(ii) Lawlessness
(iii) Ignorance
(iv) Hostility by the husband in divorce
(v) Erosion of western culture into Islamic law
(vi) Inability of Court to enforce its Judgment

These factors will be discussed altogether.

Poverty is one major problem militating against the observation of Iddah in our society. Islamic law did not recognize poverty as a reason for not observing Iddah. This is because during the Iddah period a woman can go out to fend for herself for necessity.[76] Like wise Islamic law mandated the husband to maintain his divorced wife and that is why it says Iddah must be observed in the husband's house. Even, it is allowed that the woman in Iddah of death can be maintained from what her husband left behind.

Lawlessness and ignorance are not excuses in law. A lot of Muslims are aware of Iddah but they take the provisions of Islamic law on Iddah with levity because the law did not prescribe a direct sanction for its non-observant.

Hostility is another factor. The husband may be hostile to her to the extent that the wife may find it difficult to continue to stay in his house. Also in a situation where the ground of divorce is lack of maintenance, the wife may not be able to withstand this.

Divorce Directly Pronounced

The Prophet (S.A.W) was reported to have said: "Divorce is connected with men and *Iddah* is connected with women".[77] As a general rule the husband has always been empowered to pronounce divorce provided that he is adult and conscious. According to the Qur'an:

íÇíøåÇ ÇáäøÈíø ÅÐÇ ØáøÞÊãõ ÇáäøÓÇÁ ÝØáøÞæåäø áÚÏøÊåäø æÃÍÕæÇ áÚÏøÉ æÇÊøÞæÇ Çááå ÑÈøßã

áÇ ÊÎÑ Ìæåäø ãä ÈíæÊåäø æáÇ íÎÑÌä ÅáÇø Ãä íÃÊíä ÈÝÇÍÔÉ ãÈíøäÉò æÊáß ÍÏæÏ Çááå

[76] Ibid p.7
[77] Professor Muhammad Rahimuddin, op. cit., p.261

Meaning:

> O prophet? When you do divorce women, divorce them at their prescribed periods, and count (accurately) their prescribed periods: and fear Allah your Lord: and turn them not out of their houses,[78] nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are the limits set by Allah:... Al-Qur'an 65:1

This is the particular verse that empowered husbands to pronounce divorce therefore, we can infer from the above verse of the Qur'an that:

- (i) that men can divorce women
- (ii) at their prescribed periods
- (iii) count their periods
- (iv) not turn them out of their houses

In this case, divorce should be pronounced by the husband when her menstruation begins. She should not cohabit with her during the cleanliness.[79] Then she will observe her Iddah for three periods this must be done in the husband's house till she completes her period of Iddah. After the third menstrual period she will become *bain* from her husband and he will not have the option of taking her back.[80]

Divorce Not Directly Pronounced

Separation is an indirect divorce but not all separation can be taken to be a divorce. But where there is separation for a long period of time, the woman may seek divorce and she will thereafter observe Iddah of three period of cleanliness.

Mālik reported that he heard Ibn Shihāb saying that the *Iddah* of a divorced will be counted by menstrual periods and cleanliness even if a long time should elapse.[81]

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[78] Emphasis mine

[79] Professor Muhammad Rahimuddin. op. cit., p.259

[80] *Ibid*

[81] *Ibid*